

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

State of Arizona,)
)
)
 Plaintiff,)
)
vs.) CR 2017-00516
)
Roger Wilson,)
)
 Defendant.)
)
)
)

REPORTER'S TRANSCRIPT OF HEARING
ON DEFENSE MOTION FOR NO CONTACT ORDER

BEFORE: The Honorable James L. Conlogue

APPEARANCES: Lori Zucco
 Deputy County Attorney
 Representing the State

Jacob Amaru, Esq.
Representing the Defendant

Janelle McEachern, Esq.
Representing Witness Eveningred

Bisbee, Arizona
September 27, 2018
8:30 a.m.

1 P R O C E E D I N G S

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3 THE COURT: Good morning. We are here in State
4 of Arizona versus Roger Wilson, CR 2017-number 516.

5 Mr. Amaru is present in the courtroom,
6 representing Mr. Wilson.

7 The State is here by Ms. Zucco.

8 Let me ask first, Mr. Amaru, are you waiving
9 Mr. Wilson's presence for this hearing?

10 MR. AMARU: I am, Your Honor. I would also like
11 to move to invoke the rule. I notice there are witnesses
12 present in the courtroom.

13 THE COURT: I don't anticipate we're going to be
14 taking any evidence today. Let's -- if we get to the point
15 where that may be necessary, I will take it up.

16 But am I correct -- well, let me ask. Are either
17 of you going to be presenting any evidence?

18 MS. ZUCCO: No.

19 MR. AMARU: Um, Your Honor, I have that motion,
20 the protective orders motion against Mr. Morgan. He's
21 present in the room. He is a witness in this issue. He's
22 also been a listed witness in the State's case.

23 I did bring with me exhibits of emails he has
24 been sending me. So I'm not anticipating calling him as a
25 witness, but I'm anticipating moving to admit his -- the

1 exhibits. And he's not a party to this matter. He doesn't
2 have standing to -- so I would ask to invoke the rule so
3 that he could be asked to excuse himself from the room.

4 THE COURT: All right. Well, let's -- we have
5 two issues. Originally -- oh, I should also note that the
6 attorney for the, I believe it's for the victim, is on the
7 telephone; is that correct?

8 MS. MCEACHERN: Your Honor, Janelle McEachern.
9 I'm the attorney for the witness Eveningred.

10 THE COURT: All right. I apologize. We went
11 through that the last time. So, and she is on the
12 telephone.

13 Now, the first issue is the motion for a Rule 11
14 evaluation. And there was a motion filed that included
15 affidavits; it included the previous reports. And I did
16 review the motion. We're in a situation where, obviously,
17 there has been several situations in which Mr. Wilson has
18 not cooperated with counsel. And where I find myself is
19 that, on the one hand, there is a motion for an evaluation,
20 and certainly there are reasonable grounds for the
21 evaluation. That's on the one side.

22 On the other side is the State's request that the
23 Court simply find that Mr. Wilson is not cooperating and
24 that he's waived his right to counsel, period.

25 So there is a clear issue here. It's apparent

1 that Mr. Wilson has not cooperated. It would be completely
2 inappropriate for me to find that he has waived his right to
3 counsel, if he's not able to cooperate. And based upon the
4 previous evaluations, based upon the current circumstances,
5 I have -- I don't believe I have any course of action except
6 to order the evaluation.

7 So, Mr. Wilson will participate in a competency
8 evaluation, and the -- we will have to await the conclusion
9 of that evaluation before we set any further hearings in
10 this matter.

11 Now, we have the previous experts. Ms. Zucco, is
12 the State nominating an expert?

13 MS. ZUCCO: Your Honor, the State is nominating
14 Dr. Menchola. We've already reached out to her. She has an
15 appointment to meet with Mr. Wilson November 7th at 9 a.m.
16 at the Pima County Jail. And we are sending her the old
17 reports, the probable cause statement, defendant's
18 statements to the police, with the recordings, and all of
19 Detective Borquez's reports. I've offered to the defense to
20 send any other materials -- oh, and their affidavits. I'm
21 just gonna send their motion for Rule 11. Any other
22 materials they would like her to have, we're open to
23 sending. But I went ahead and scheduled the appointment so
24 we could expedite this.

25 THE COURT: I appreciate that. Mr. Amaru, were

1 you nominating an expert?

2 MR. AMARU: Judge, what I saw on your list that
3 was provided to me was a Dr. Sullivan was -- was noted he
4 was conditionally approved. And Sullivan does do
5 neuro-psyches, and I would ask for Dr. Sullivan, if he's
6 available, on the list. I have not contacted him, but he's
7 somebody I've worked with before, and I think -- I do think
8 there is a neuro-psyche aspect to this situation.

9 THE COURT: He is in Tucson?

10 MR. AMARU: Yes, sir.

11 THE COURT: And do you remember his first name?

12 MR. AMARU: James Sullivan.

13 THE COURT: James Sullivan. All right. And as
14 far as you know, he would likely be available to do it?

15 MR. AMARU: I have no reason to believe -- I want
16 to appoint somebody, either Sullivan or Streitfeld, somebody
17 that I know who does -- that deal with the neuro-psyche
18 component to it.

19 THE COURT: All right. Well, I don't have a
20 preference between the two. We have worked with Dr.
21 Streitfeld before, successfully, and I just don't remember
22 Dr. Sullivan. I recognize the name, but I don't remember
23 any of his testimony. So are you preferring Dr. Sullivan?

24 MR. AMARU: I have worked with Dr. Sullivan. I
25 think he's brilliant and really wonderful, good doctor, so.

1 THE COURT: All right. It is ordered appointing
2 Dr. Menchola as the State's expert, and Dr. James Sullivan
3 as the Defendant's expert.

4 MR. AMARU: Your Honor, why don't we handle it
5 this way, if you don't mind. Is that I will contact them
6 both, and whoever's available -- if Sullivan's not
7 available, we can go with Streitfeld.

8 THE COURT: All right. So, the appointment will
9 be made based upon the availability of one of those doctors.

10 Now, given the previous reports, I am also going
11 to ask that as part of the evaluation, that the evaluators
12 provide information on the factors in Sell versus United
13 States. I think that that would be important as we go
14 forward.

15 All right. Now, there is a motion pending to --
16 for a no-contact order. And Mr. Amaru, that's a general --
17 a general motion, but um.

18 MR. AMARU: Your Honor, here's my concern. We
19 have a situation where an individual, Mr. Morgan, who's
20 present in the courtroom, who's basically, in my opinion,
21 using Mr. Wilson to serve his purposes of what he believes
22 to be shedding light on corruption in Cochise County,
23 including the corruption with this Court.

24 Um, but we also have a homicide trial, and we're
25 trying -- attempting to get Mr. Wilson a fair trial. And as

1 the Court is aware of, Mr. Wilson -- sorry -- the Grand Jury
2 transcript was already leaked, and the State is actually
3 been -- filed pleadings saying that we have potentially
4 tainted the jury pool, and it's Mr. Morgan who leaked it.
5 And so we're already -- that's one strike against him, and
6 in my opinion, because his due process rights to a fair
7 trial are already kind of jeopardized, because the jury pool
8 was jeopardized in this situation by Mr. Morgan because he
9 felt that there was some greater good involved here.

10 When we have to choose between the First
11 Amendment issues and Mr. Morgan's (sic) right to a fair
12 trial, his right to a fair trial is going to trump that.

13 On top of that, I have Mr. Morgan contacting me,
14 basically -- and I laid it out in my motion -- first of all,
15 offering to facilitate the communications between Mr. -- me
16 and Mr. Morgan (sic). I had not authorized him to
17 facilitate communications.

18 And, in his own words -- which I quoted directly
19 from the email, and I've had them marked as an exhibit --
20 he's practicing law. And this Court has jurisdiction, has
21 the ability to issue a protective order saying that if he
22 continues to talk to Mr. Wilson, he'll get sanctioned.

23 THE COURT: And you have prepared a form of
24 order.

25 MR. AMARU: I will provide you one, Judge. I did

1 not bring one with me.

2 THE COURT: What I was saying is that you have
3 provided one.

4 MR. AMARU: Oh, I did? Oh, even better.

5 THE COURT: And I'm understanding, Ms. Zucco,
6 that the State's not taking a position in this regard?

7 MS. ZUCCO: Correct.

8 THE COURT: All right. Well, this is certainly
9 an unusual situation. And what I was saying previously is
10 that the order, both the motion and the order are general in
11 nature, but we are in a situation right now where, um, where
12 with the evaluation of competency, and specifically what
13 we're dealing with here is Mr. Wilson's ability to cooperate
14 with counsel. And I do find that your position is
15 legitimate, certainly at this time, because we need to make
16 sure that the evaluation is not influenced in any way, or
17 sidetracked or tainted in any manner.

18 But my real hope -- and I'll just be honest with
19 you -- my real hope is that Mr. Wilson will cooperate in the
20 evaluations, and there will be a finding of competency and
21 we can go forward. I mean, that's my real hope. And I
22 genuinely believe that Mr. Wilson has the ability to
23 cooperate. There are no issues on any of the other
24 elements, at least in my mind. He understands the process,
25 he understands the roles of all of the different persons

1 involved in the system, but the question here is simply
2 whether he has an ability to cooperate or not.

3 So, given the status of the proceeding at this
4 point, I will enter the order as submitted.

5 Now, for a period of time, Mr. Wilson -- there
6 was a hybrid representation, and Mr. Wilson was allowed to
7 present motions for a period of time. That has ceased, and
8 that specifically has ceased.

9 MR. AMARU: I can address that, Judge. What my
10 intentions were, because of even though typically this would
11 be a little bit unusual to during the -- because once the
12 Rule 11 has been granted, you know, we're kind of in a
13 holding pattern. But what I was gonna do is file all the
14 motions that I thought were necessary to prepare this case
15 for trial in the interim period and get this case ready, and
16 with the Court's permission, and then, you know, I'll file
17 everything I think that needs to get filed.

18 I can tell you there's probably gonna be a
19 Miranda motion filed, there's gonna be a couple motions in
20 limine filed, there's certainly going to be a 404(b) motion
21 filed, and go from there, and then we can take it all up if
22 he is found to be competent.

23 THE COURT: Right. But not before?

24 MR. AMARU: Correct.

25 THE COURT: To the extent you need permission, I

1 grant permission to file any motions that you believe are
2 appropriate. And I don't see any reason why the State
3 wouldn't be able to respond at this point. We're just not
4 gonna hear them. We can do the writing part of the motions
5 now. And, again, I'm hopeful that there's going to be a
6 finding of competency; we can hear those motions, have a
7 trial set, and we can go forward.

8 But Mr. -- any papers filed by Mr. Wilson from
9 the last hearing forward simply will be going to counsel,
10 and the Court will not be acting on any papers filed by
11 Mr. Wilson.

12 MR. AMARU: And that's fine, Judge. I was not
13 under the impression that this was hybrid representation.

14 THE COURT: It is not anymore. It was for a
15 period of time, but that ceased. There was one remaining
16 motion that I wasn't aware of that was filed right before
17 the hybrid representations ceased, but was not part of the
18 file when we were in court last time. And that's a motion
19 entitled motion for special actions, and that motion is
20 denied at this time.

21 Okay. So what we need to do then is get the
22 evaluations set as soon as possible. We will set further
23 hearings. I'm fine with, since we don't know when the
24 defense evaluation is gonna take place, just wait before we
25 set a follow-up hearing, or should we set a hearing now?

1 MR. AMARU: Your Honor, I can -- because we have
2 the -- I have access to that. If the Court's okay with me
3 emailing, because I can contact those two doctors when I get
4 back and then kind of give it -- I'll send a group email out
5 to everyone.

6 THE COURT: All right. In terms of scheduling
7 things like that, provided that there -- all the parties are
8 getting the information at the same time, I don't have a
9 problem with that. It's simply information's not gonna
10 be -- we're not gonna be filing motions or doing hearings
11 digitally or anything like that, but for scheduling, I'll
12 find that provided that the communication goes to all
13 parties at the same time.

14 MR. AMARU: Of course.

15 THE COURT: All right.

16 MS. MCEACHERN: If I may? I would just ask if
17 there's scheduling conferences for the actual trial -- I
18 understand we're in the Rule 11 process, and things are
19 going to string out a bit -- but if there's actual
20 scheduling for the trial, if the parties could please put me
21 in this loop, and I can attend that hearing. Um, my
22 calendar's a little bit crazy with three counties, so I need
23 to really monitor it and make sure that I can be there when
24 the parties have a trial.

25 THE COURT: Okay.

1 MS. MCEACHERN: So that's just my request. Ms.
2 Zucco has been good to keep me informed, but I was just also
3 asking.

4 THE COURT: I think it would be appropriate at
5 this time. I like simple rules, easy rules, and all of the
6 minute entries from the Court will be copied to
7 Ms. McEachern.

8 MS. MCEACHERN: Thank you.

9 THE COURT: So, if there are any scheduling
10 orders going out, or -- and we wouldn't have a hearing
11 unless there was a scheduling order. So, any order from the
12 Court will be sent to Ms. McEachern, and then you'll have
13 been plenty of notice and certainly you can appear
14 telephonically.

15 MS. MCEACHERN: Thank you.

16 THE COURT: All right. Anything else for today,
17 counsel?

18 MR. AMARU: No. Thank you very much, Your Honor.

19 MS. ZUCCO: No, Your Honor.

20 THE COURT: Okay. Thank you.

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22 (Whereupon the proceedings conclude.)

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C E R T I F I C A T E

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4 proceedings had upon the hearing of the foregoing matter are
5 fully and accurately in the shorthand record made by me
6 thereof, and the foregoing 12 printed pages of said
7 transcript contain a full, true and correct transcript of my
8 shorthand notes taken by me as aforesaid, all to the best of
9 my skill and ability.

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DATED this 26th day of July, 2019.

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BUFFY J. DENEKE, AZ #50368
Certified Court Reporter